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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 28, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Hand Delivered

Re: Motion to Establish Comment Schedule
ABS-CBN Telecom, North America, Inc.
IB Docket No. 96-261

Dear Mr. Caton:

Transmitted herewith, on behalf of ABS-CBN Telecom, North America, Inc., are an original and four copies of its Motion to Establish Comment Schedule in the above-referenced proceeding.

If there any questions concerning this matter, please contact me.

Very truly yours,



R. Edward Price

Enclosure

cc (w/encl) by hand delivery:

Peter Cowhey
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JUL 28 1997

In the Matter of)
)
International Settlement Rates)

IB Docket No. 96-261

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION TO ESTABLISH COMMENT SCHEDULE

ABS-CBN Telecom, North America, Inc. ("ABS-CBN Telecom"), by its attorneys and in response to the Commission's order granting AT&T's "Motion for Confidential Treatment,"¹ hereby moves the Commission to establish a further comment schedule in the above-captioned proceeding prior to its adoption and release of a final order.²

In response to arguments made in ABS-CBN Telecom's Comments, Reply Comments and Supplemental Comments, dated February 7, March 31 and June 24, 1997, respectively, in

¹ International Settlement Rates, IB Docket No. 96-261, Order Granting Motion for Confidential Treatment, DA 97-1563 (released July 23, 1997) ("Order"). The Order was adopted on July 23, 1997 — one day after AT&T filed its "Motion for Confidential Treatment," and before ABS-CBN Telecom or, to our knowledge, any other interested party had an opportunity to respond to AT&T's "Motion."

² This motion is filed without prejudice to the rights of ABS-CBN Telecom to seek reconsideration or otherwise to challenge the FCC's order granting AT&T's Motion, or the Confidentiality Agreement adopted thereby, to the extent the Order or the Confidentiality Agreement unlawfully limit the rights of ABS-CBN Telecom to comments on the AT&T data or to make legal arguments based thereon in this docket or in the related foreign participation docket, see Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking, FCC 97-195 (released June 4, 1997) ("Foreign Participation NPRM") (also proposing to apply benchmark settlements), or to make similar use of said data on appeal from any final order of the FCC in said dockets.

the above-captioned proceeding,³ AT&T on July 22, 1997, submitted to the Commission under seal certain call distribution data upon which the Commission's staff relied in determining the national extension element of the tariffed components prices (TCPs) used to calculate the proposed accounting rate benchmarks.⁴ AT&T says it has made this submission "for full development of the record in this proceeding"⁵ However, neither AT&T's Motion nor the Commission's Order granting that Motion state a schedule for allowing interested parties to comment on the data which AT&T now, for the first time, placed in the record. ABS-CBN Telecom therefore requests that the Commission establish a further comment schedule in this proceeding,⁶ with initial comments due on August 15, 1997, and reply comments due on August 22, 1997.

Good cause exists for establishing this proposed schedule:

First, there are over fifty parties to the instant proceeding, including foreign governments and carriers from over thirty countries. Accordingly, the two and one half week comment period proposed here is the minimum necessary to ensure that all parties have a reasonable opportunity to inspect the AT&T data; review said data with counsel and/or outside

³ See ABS-CBN Comments, Feb. 7, 1997, at 5-8; ABS-CBN Reply Comments, Mar. 31, 1997, at 6-8; ABS-CBN Supplemental Comments, June 24, 1997, at 2-5.

⁴ See Telecommunications Division, FCC International Bureau, Foreign Tariffed Components Prices 12-14 (Dec. 1996) (report appended to International Settlement Rates, IB Docket No. 96-261, Notice of Proposed Rulemaking, FCC 96-484 (released Dec. 19, 1996) ("Benchmark NPRM")); see also ABS-CBN Comments, Feb. 7, 1997, at 6.

⁵ AT&T Confidentiality Motion at 1.

⁶ The Commission may also wish to set forth the manner in which the parties can comment on the AT&T data consistent with the confidentiality constraints the Commission has imposed.

experts; and prepare and file comments. This is particularly so in light of the expected scope of the new AT&T data, which, we understand, cover up to ninety days of telephone call volumes, segmented by calling hour for at least fifty-six countries. Thus, following a preliminary review of the filing, it may be necessary for ABS-CBN Telecom and other parties to retain outside experts to analyze the data in light of the Commission's TCP calculations and other data that may be available to the parties.

Second, the schedule proposed here is reasonable compared to past pleading schedules in this docket. Following release of the Benchmark NPRM, fifty days were allotted before the first round of comments were due, with another fifty-two days for reply comments.⁷ Subsequently, the Commission issued a Public Notice seeking another round of supplemental comments, allotting twenty days for supplemental comments and a further eight days for supplemental reply comments.⁸ In contrast, the schedule proposed here by ABS-CBN Telecom would afford less than fifteen business days for comments and five business days for reply

⁷ The Benchmark NPRM was adopted and issued on December 19, 1996. It established a comment date of February 7, 1997, and a reply comment date of March 10, 1997. This reply comment date was subsequently extended to March 31 so that parties could review the agreement of the World Trade Organization's Group on Basic Telecommunications and comment on the benchmark proposals in light of that agreement. See International Settlement Rates, IB Docket No. 96-261, Order Granting Extension of Time, DA 97-440 (released Feb. 27, 1997).

⁸ See Public Notice, "International Bureau Seeks Additional Comments in the Settlement Rate Benchmarks Proceeding (Notice of Proposed Rulemaking)," DA 97-1173 (released June 4, 1997). This additional comment round was granted so that parties in the Benchmarks proceeding could comment on a proposal in the Commission's Foreign Participation NPRM, see supra note 2, that carriers not be allowed to provide switched traffic over private lines to countries that do not have accounting rates which fall within the relevant benchmark range, as established in the Benchmarks proceeding.

comments.

Third, the additional comment period proposed here would not unreasonably delay final action in this docket.⁹ The Commission initiated this docket over seven months ago, and ABS-CBN Telecom first advised the Commission (and AT&T) that the current record was legally inadequate on February 7, 1997.¹⁰ The absence of record data to support the benchmarks proposed was again raised by ABS-CBN Telecom in March¹¹ and June.¹² Hence, now at the eleventh hour when the FCC has acknowledged that these AT&T data are relevant to the record,¹³ it would plainly be unreasonable, and make a mockery of the notice and comment procedures required by the Administrative Procedure Act,¹⁴ to foreclose parties from having an adequate time to review and comment on the data.

For all of the foregoing reasons, the Commission should adopt the additional comment

⁹ Neither AT&T's Motion nor the Commission's Order granting that Motion provides any reason why an additional comment period could not be provided prior to adoption of a final order, particularly in light of the fact that the docket has now been open for over seven months, since December 19, 1996.

¹⁰ See ABS-CBN Comments, Feb. 7, 1997, at 5-8.

¹¹ See ABS-CBN Reply Comments, Mar. 31, 1997, at 6-8.

¹² See ABS-CBN Supplemental Comments, June 24, 1997, at 2-5.

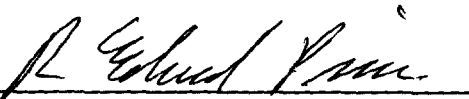
¹³ In its Motion for Confidential Treatment, AT&T admits its call distribution data are "relevant to the proposed benchmark settlement rates." AT&T Confidentiality Motion at 1.

¹⁴ 5 U.S.C. § 553.

schedule proposed herein and allow the parties a reasonable opportunity to review and comment on these new AT&T data prior to the adoption of a final order in this proceeding.

Respectfully submitted,

ABS-CBN TELECOM,
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July 28, 1997

CERTIFICATE OF SERVICE

I, Barbara Frank, a secretary in the law firm of Koteen & Naftalin, L.L.P. do hereby certify that copies of the foregoing "MOTION TO ESTABLISH COMMENT SCHEDULE" were mailed first-class U.S. Mail, postage prepaid, this 28th day of July 1997 to the following:

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